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IN THE

Supreme Court of the United States

BRISTOL-MYERS SQUIBB COMPANY,
Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN FRANCISCO, *et al.*,
Respondent.

On Petition for a Writ of Certiorari to the California Supreme Court

BRIEF OF PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS*[1]

Pharmaceutical Research and Manufacturers of America (PhRMA) is a voluntary, nonprofit association representing the nation's leading research-based pharmaceutical and biotechnology companies. PhRMA's mission is to advocate public policies that encourage the discovery of medicines that help patients lead longer, healthier, and more productive lives. PhRMA closely monitors legal issues that affect the pharmaceutical industry and frequently participates as amicus in cases, including by filing *amicus curiae* briefs with this Court in cases raising matters of significance to its members.

The question presented is critically important to PhRMA's members because they, like the petitioner, offer products or services nationwide and are frequently subject to claims of personal injury arising from the use of those products and services. Tens of thousands of individuals have filed such claims against PhRMA members just in the past five years. Many of those claims have been filed in the California state courts by out-of-state plaintiffs alleging injuries from events that occurred outside of California. By asserting specific jurisdiction over petitioner, the California Supreme Court departed from the predominant view that bars such jurisdiction in the absence of a causal relationship between the defendant's forum contacts and the plaintiff's claims.

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[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No one other than *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. Letters from the parties consenting to the filing of *amicus curiae* briefs have been filed with the Clerk of the Court.

PhRMA has a strong interest in the uniform application of standards for personal jurisdiction that comport with fundamental principles of due process. In resolving disputes over personal jurisdiction, this Court has consistently applied the Due Process Clause to protect the values of fairness and interstate federalism. The formless standard that California's high court has endorsed, however, fundamentally rejects those values. The decision below allows the California courts to become magnets for disputes with no causal connection to events in California. Such magnet jurisdictions distort the development of the law and the legal process and create uncertainty and unfairness for many of PhRMA's members, including those with similar, active litigation in California and other magnet jurisdictions. PhRMA therefore urges the Court to grant the petition and clarify the "relatedness" test for specific jurisdiction.

INTRODUCTION

The constitutional limits upon a state court's exercise of personal jurisdiction serve two distinct functions. One – which is addressed, though not adequately protected, by the decision below – is to protect a nonresident defendant "against the burdens of litigating in a distant or inconvenient forum." *World Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980). The second, however, is "to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *Id.* The majority opinion gave this interest little attention, and its decision effectively nullifies it.

The decision below authorizes California state courts to exercise personal jurisdiction over nonresident defendants in disputes with nonresident

plaintiffs that are not causally connected to conduct or injury occurring in-state. For these disputes, the decision permits California's state courts to serve, in effect, as a national court. Allowing the courts of a single state to assume such a role violates "the principles of interstate federalism" that the Due Process Clause protects and undermines the fair resolution of product liability disputes. *Id.* at 293-94.

The Court should grant the petition because the decision below is of enormous practical significance for business in general and, in particular, for PhRMA's members. The lower courts have long disagreed about whether specific jurisdiction requires a causal connection between the defendant's forum contacts and the plaintiff's claims. No prior decision rejecting the need for a causal connection, however, has had so broad and disruptive an impact.

Thousands of nonresident plaintiffs already have claims pending in California courts against nonresident pharmaceutical manufacturers, and thousands more such claims inevitably will follow. Allowing these claims to proceed in the courts of a state where the injury did not occur and where key independent witnesses such as a plaintiff's treating physicians cannot be subpoenaed to testify at trial, is fundamentally unfair to defendants. And allowing California courts, which are wholly unaccountable to the residents of other states, to serve as the forum for the resolution of disputes that largely involve the residents of those states, undermines the principles of interstate federalism that the Due Process Clause protects. As long as the divide persists, courts that do not require a causal connection between the defendant's forum contacts and the plaintiff's claims will exert disproportionate adjudicatory power in cases involving corporations with nationwide sales.

The factual similarity of this case to many other pending cases, and the absence of any causal connection between the alleged injuries of out-of-state plaintiffs here and the alleged forum contacts, makes this an ideal vehicle to address the longstanding conflict among lower courts as to the scope of specific jurisdiction. The Court should grant the petition and resolve whether specific jurisdiction requires a causal connection between the nonresident defendant's forum contacts and the events giving rise to a nonresident plaintiff's claim

ARGUMENT

I. WHETHER CALIFORNIA COURTS CONSTITUTIONALLY MAY SERVE AS NATIONAL COURTS FOR RESOLVING CLAIMS OF OUT-OF-STATE PLAINTIFFS IS A PROFOUND AND RECURRING QUESTION.

The question presented reflects a deep divide among the lower courts over the scope of specific jurisdiction. It is also extremely important. Like the petitioner, many companies, and particularly pharmaceutical companies, are not at home in California for purposes of general jurisdiction. Also like petitioner, these companies do not plan their marketing in California, and yet they sell their products nationwide and support some personnel and facilities in California. Allowing California to seize on these contacts to arrogate the power to resolve the causally unrelated claims of out-of-state plaintiffs is irreconcilable with fundamental fairness and interstate federalism.

A. The Decision Below Widens The Conflict Over Whether Specific Jurisdiction Requires A Causal Relationship Between The Defendant's Forum Contacts And The Plaintiff's Claims.

A court may assert general personal jurisdiction over a corporation if it is "at home" within the forum state. *Daimler AG v. Bauman*, 134 S. Ct. 746, 751, 760-62 (2014). If a defendant is not at home in the forum, however, a court may nonetheless have specific jurisdiction over that defendant, but only if the litigation itself "aris[es] out of or relate[s] to" the defendant's conduct within the forum state. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919, 923-24 (2011) (alterations in original) (citations omitted). The Court has not resolved, however, whether litigation can arise out of or relate to a given forum if there is no causal connection between the defendant's forum contacts and the plaintiff's claims.

The decision below permits a California state court to assert specific jurisdiction over a non-resident defendant facing claims brought by out-of-state plaintiffs based on events occurring entirely outside of California. Pet. App. at 1a-2a, 4a-5a. The majority below acknowledged that the defendant's challenged sales and marketing were designed out-of-state and conducted nationwide. *Id.* at 28a. The out-of-state plaintiffs' claims were "related" to the defendant's in-state conduct (according to the majority) because their claims arose from the same nationwide sales and marketing as the claims of California plaintiffs joined in the action. *Id.* As the dissenting opinion explains, this "expands specific jurisdiction to the point that, for a large category of defendants, it becomes indistinguishable from general jurisdiction,"

and "creates the equivalent of general jurisdiction in California courts." *Id.* at 50a (Werdegar, J., dissenting).

As the petition explains, the question presented not only divided the California Supreme Court but reflects a broader division of authority among the federal and state appellate courts. Pet. at 9-20. Most courts hold that litigation "aris[es] out of or relate[s] to" defendant's in-state conduct only if there is some causal connection between that conduct and the plaintiff's claim. *Id.* at 11-14. A minority hold that no causal connection is required, and that a "substantial" or "material" connection, one evaluated by indeterminate standards on the facts of each case, is enough. *Id.* at 14-16.

The latter approach seems plainly inconsistent with *Daimler*. To be sure, *Daimler* addresses general, rather than specific, jurisdiction. But the whole point of having a test for general jurisdiction is to have a means of determining when a nonresident defendant's contacts with a forum – those causally unrelated to the events in dispute – are sufficient to satisfy due process. That test is moot if the same general contacts insufficient to render a defendant "at home" in a state confer specific jurisdiction in any case involving the defendant's products.

The decision below also is irreconcilable with the fundamental values of fairness to non-residents and interstate federalism that the Due Process Clause requires courts to honor when assessing the scope of personal jurisdiction. To be sure, "progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome." *Hanson v. Denckla*, 357 U.S. 235, 251 (1958). Nonetheless, this Court "ha[s] never accepted the proposition that state lines are irrelevant for

jurisdictional purposes, nor could [it], and remain faithful to the principles of interstate federalism embodied in the Constitution." *World-Wide Volkswagon Corp.*, 444 U.S. at 293. Instead, the Court has recognized that "[t]he sovereignty of each State . . . implie[s] a limitation on the sovereignty of all of its Sister states" that is "express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment." *Id.* Allowing one state's courts to serve as the national forum for resolving the disputes of out-of-state plaintiffs against out-of-state defendants arising from out-of-state events is irreconcilable with the constitutional scheme of interstate federalism.

The persistent division of opinion in the lower courts, and the inconsistency between the result below and the constitutional limitations on personal jurisdiction that this Court has repeatedly enforced, aptly illustrate the importance of the question and the need for plenary review. This Court should grant the petition to provide a uniform, administrable standard of specific jurisdiction that preserves an appropriate balance of adjudicatory power among state courts.

B. The Decision Below Directly Affects Other Comparable Pending Litigation.

The Court also should grant the petition because the issue is important not just to the individual petitioner but to all companies that market their products nationwide. PhRMA's members, for example, include pharmaceutical manufacturers that are not incorporated in California. Like the petitioner, these companies develop and sell medicines that are approved by the Federal Food and Drug Administration for marketing throughout the United States and for use, as appropriate, by patients

throughout the United States. Like the petitioner, these companies employ, often in each of the 50 states, representatives who are knowledgeable about their prescription products to meet with and address the questions of prescribing physicians. Like the petitioner, these companies often develop, at their headquarters, nationwide marketing plans, consistent with the standardized drug labeling that FDA has approved to accompany the medicine nationwide. Many pharmaceutical companies have facilities in states other than their home state, such as research hubs in California that may focus on a particular disease or product line.

Pharmaceutical companies also are routinely subject to litigation involving drugs that are marketed, sold, and distributed nationwide. FDA approval to market a drug generally reflects the FDA's judgment not that use of the drug is risk-free, but that the drug's benefits "outweigh their known risks" for the population as a whole.[2] But with any prescription drug, risks remain and individual experiences will vary. Because their products are widely used and rarely risk-free, pharmaceutical companies are frequently defendants in product liability cases that involve large numbers of plaintiffs in many states who assert that they and/or their doctors were exposed to nationwide sales and marketing campaigns.

Given these commonalities, the core facts cited to support specific jurisdiction in the decision below will

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[2] *See* FDA, *Development and Approval Process (Drugs)*, http://www.fda.gov/Drugs/DevelopmentApprovalProcess/ (last updated Jan. 29, 2016) (explaining that the FDA's drug approval process "ensures that drugs, both brand-name and generic, work correctly and that their health benefits outweigh their known risks").

be found in many other product liability cases involving other pharmaceutical companies. For example, the majority concluded that "BMS's nationwide marketing, promotion, and distribution of Plavix" created the "substantial nexus" between the nonresident plaintiffs' claims and BMS's contacts with California. Pet. App. at 28a. All of PhRMA's members engage in some form of nationwide marketing, promotion, and distribution of their drugs. The majority also cited BMS's "other activities" in California, such as the maintenance of research and development facilities unrelated to the development of Plavix. *Id.* at 5a-6a, 32a. Many of PhRMA's members have facilities in California that conduct activities unconnected to events that out-of-state plaintiffs allege cause their injuries. Because the same facts that supported specific jurisdiction in Petitioner's case will be present in many cases involving PhRMA's members, the question presented is important to the industry as a whole and will affect many other cases.

Indeed, the instant case is but one example among many in which California courts are entertaining claims that collectively involve thousands of out-of-state plaintiffs against nonresident pharmaceutical companies. A recent study of more than 2,900 cases filed against pharmaceutical companies in Los Angeles and San Francisco counties between January 2010 and May 2016, showed that these complaints combined the claims of over 25,000 individual plaintiffs, and that only 10.1% of these individuals were California residents.[3] The remaining 89.9% —

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[3] Ryan Tacher, Civil Justice Ass'n of Cal., *Out-of-State Plaintiffs: Are Out-of-State Plaintiffs Clogging California Courts?* 2 (2016), http://cjac.org/what/research/CJAC_Out_of_State_Plaintiffs_Exec_Summary.pdf.

over 20,000 individual claimants — were residents of another state.[4] California state courts are thus effectively acting as national courts in pharmaceutical product litigation not just for the many out-of-state plaintiffs who have sued BMS in cases involving Plavix, but for thousands of claims of other out-of-state plaintiffs against other out-of-state manufacturers in cases involving a variety of other pharmaceutical products. Because the decision below is binding precedent for all California courts on the question presented, this Court should grant review.

C. The Decision Below Disregards Long-Standing Principles Of Fairness And Interstate Federalism That The Due Process Clause Protects.

The enforcement of due process limits on personal jurisdiction serves "two related, but distinguishable, functions." *World Wide Volkswagon Corp.*, 444 US. at 291-92. "It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *Id.* at 292. The decision below eviscerates both of these core functions.

1. By filing suit in a state far away from the one where a plaintiff resides and was injured, a plaintiff can effectively limit a pharmaceutical company's ability to put on a full and fair defense. In many pharmaceutical product liability cases, the outcome can turn on the testimony of an independent witness – the plaintiff's prescribing physician. The

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[4] *Id.*

prescribing physician can testify authoritatively as to the information she had about the risks and benefits of the drug and how she weighed those risks and benefits before deciding to prescribe the drug to the plaintiff. Such testimony is, as a matter of state law, often critical to the assessment of liability. *See, e.g.*, *Carlin v. Superior Court*, 13 Cal. 4th 1104, 1116 (1996) ("[I]n the case of prescription drugs, the duty to warn runs *to the physician*, not to the patient."); *Valentine v. Baxter Healthcare Corp.*, 68 Cal. App. 4th 1467, 1483 (1999) ("In the case of prescription drugs . . . it is through the physician that a patient learns of the properties and proper use of the drug . . . ."). And because juries typically do not view physicians as aligned with either of the parties, a physician's testimony is often critical to the jury's resolution of the merits. The testimony of the plaintiff's prescribing physician often plays a central role in a pharmaceutical company's defense of products liability cases.

State courts are limited, however, in their power to compel out-of-state witnesses to appear at trial. A California court, for example, has no power to compel nonparty witnesses from other states to appear at trial in California. *See* Cal. Code Civ. Proc. § 1989. Such limitations are common and reflect longstanding limits on the judicial power of state sovereigns that modern minimum contacts analysis does not overcome for non-party witnesses, such as physicians, in civil trials. *See, e.g.*, *Colo. Mills, LLC v. SunOpta Grains & Foods Inc.*, 269 P.3d 731, 733 (Colo. 2012) (holding that "as a matter of state sovereignty," Colorado courts "have no authority to enforce civil subpoenas against out-of-state nonparties"); Marc Fuller, *Jurisdictional Issues in Anonymous Speech Cases*, 31 Comm. Law. 24, 26

(2015) ("[S]ubpoena power is governed by the 'strict territorial approach' of *Pennoyer v. Neff*."). While the defense can play videotaped excerpts of a discovery deposition of an out-of-state witness, the inability to tailor the trial examination to the key issues brought forth in subsequent expert analysis and at the trial itself is a severe limitation on an effective defense. Not being able to compel the presence of a key witness at trial is plainly one of the "burdens of litigating in a distant or inconvenient forum," *World Wide Volkswagen*, 444 U.S. at 292, and one that the decision below imposes en masse without regard to its negative impact on the fundamental fairness of the trial of products liability cases.

2. The majority below acknowledged that "the fact that the nonresident plaintiffs greatly outnumber the California plaintiffs does give us some pause." Pet. App. 39a. Nonetheless, to justify its sweeping assertion of jurisdiction to resolve the claims of the nonresidents, the majority opinion cited to *California's* interests in providing an efficient judicial mechanism for resolving national disputes, its interest in regulating conduct that affects consumers. *Id.* at 38a-41a. Nowhere, however, did the majority consider how assertion of its interests would affect the ability of other states to vindicate their interests in regulating conduct that affects their residents. California's expansive interpretation of its jurisdiction disrupts the proper balance of federal and state adjudicatory power.

The premise of the decision below – that the courts of one state may serve as national courts for the complaints of residents of all states – fundamentally conflicts with a system of interstate federalism. State courts with expansive views of specific jurisdiction destroy interstate federalism by hearing a

disproportionate share of cases that require application of another state's laws. If the decision below were to stand, the California court presiding over petitioner's case could be in the position of applying the laws of the 33 different states in which the out-of-state plaintiffs reside. Pet. App. at 2a. Not only do state courts frequently lack the experience applying the law of other states that federal courts necessarily develop, but the courts of any one state necessarily lack any "accountability to the residents of any other State."[5] A state that develops the law of other states regulating the conduct of non-resident defendants as it affects non-resident plaintiffs necessarily deprives the directly affected states of the ability to address those same issues in the manner most appropriate for their state.

Such an approach also usurps the role of the federal courts, which the Constitution envisioned as the proper locus for litigation of nationwide significance, and which provides for the efficient coordination of pretrial proceedings where appropriate without sacrificing basic values of fairness in the eventual trial of individual disputes. In federal court, Multi-District Litigation ("MDL") proceedings allow, in appropriate cases, for the efficient administration of pre-trial proceedings in a single court. *See* Pet. App. at 73a (Werdegar, J., dissenting) ("No mechanism

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[5] *See* H.R. Rep. No. 106-320, at 8-9 (1999) ("Because of the way in which they have overreached in the use of the class device, some State courts have effectively made themselves the arbiters of the laws of other States, raising serious federalism concerns . . . . [A] single State court decides the law of many other jurisdictions, effectively telling other States what their laws are with no input from the judiciaries of those other jurisdictions. Again, this practice means that a State court, which has no accountability to the residents of any other State, is dictating applicable laws to out-of-State residents.").

exists for centralizing nationwide litigation in a state court . . . . If efficiency is the goal, federal litigation centralized through the multidistrict procedure offers a more promising path than a series of uncoordinated state and federal court actions.). If the coordinated cases continue beyond pre-trial proceedings, they are remanded to the transferor court, which will generally have expertise in the applicable state law and the power to compel appropriate non-party witnesses to testify.

No similar mechanism for efficiently coordinating nationwide tort litigation exists in any one state court. Instead, when a few state courts interpret specific jurisdiction expansively and draw in out-of-state claims, they overreach their role as "coequal sovereigns in a federal system" (*World-Wide Volkswagen*, 444 U.S. at 292) and disregard the "territorial limitations on the power of the respective States." (*Hanson*, 357 U.S. at 251). When California's (or other state's) courts serve as national courts for products liability cases, they encroach on the jurisdictional territory of other sovereigns, and deny other sovereigns opportunities to assert their interests in directing the evolution of their own state law, and serving as the forum for their residents to seek redress.

State court overreaching also diminishes the role of federal courts in hearing cases of national significance. As Congress acknowledged in the Class Action Fairness Act ("CAFA"), the "intent of the framers" was that federal courts would hear "interstate cases of national importance." Pub. L. No. 109-2, §2(b)(2), 119 Stat. 4, 5 (2005) (codified at 28 U.S.C. § 1711 (note)). A federal forum is important for defendants because state and local courts sometimes engage in "[a]buses," including "keeping

cases of national importance out of Federal court," "acting in ways that demonstrate bias against out-of-State defendants;" and "making judgments that impose their view of the law on other States and bind the rights of the residents of those States." *Id.* § 2(a)(4), 119 Stat. at 5. Congress intended CAFA to address these issues in part by allowing defendants to remove mass actions to federal court under a variety of circumstances, *id.* § 5(a), 119 Stat. at 12-13 (codified at 28 U.S.C. § 1453(b)), but out-of-state plaintiffs have often evaded CAFA by filing a series of complaints that each names fewer than 100 plaintiffs. Similarly, they attempt to defeat removal jurisdiction by naming an in-state entity, such as a distributor, as a defendant even in situations where there is no actual connection between the in-state entity and the plaintiffs. *See* Pet. App. at 59a (Werdegar, J. dissenting) (describing the majority's reference to McKesson as "perhaps the ruddiest" of all "the majority's red herrings" because "at no point have real parties argued McKesson bore any responsibility in providing them Plavix.").[6] Even when defendants expose such maneuvers as improper, litigating the issues wastes resources and disrupts the orderly administration of the law.[7]

3. Finally, the decision below compounds the uncertainty over jurisdiction for companies that

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[6] Docket searches indicate that McKesson has been named as a defendant in 795 of the 1,499 products liability cases filed against pharmaceutical companies in Los Angeles County in the past five years.

[7] *See, e.g., In re Avandia Mktg., Sales Practices & Prods. Liab. Litig.*, 2014 U.S. Dist. LEXIS 67675, at *11 (E.D. Pa. May 15, 2014) (concluding six years after the issue was first raised that the case was "mature enough" to determine that McKesson was misjoined).

market their products nationwide, and particularly for pharmaceutical companies.

Daimler acknowledged that predictability is an important aspect of due process, noting that even corporations with nationwide sales are entitled to some "minimum assurance[s]" about where their conduct will render them liable to suit. *Daimler*, 134 S. Ct. at 760-62; *see also Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) ("Predictability is valuable to corporations making business and investment decisions."). But in state courts with expansive views of how to apply the "relatedness" standard for personal jurisdiction, *Daimler*'s limits on general jurisdiction are simply mooted for companies with nationwide sales and marketing. As the dissent observed, an expansive view of specific jurisdiction "subject[s] companies to the jurisdiction of California courts to an extent unpredictable from their business activities in California." Pet. App. at 50a (Werdegar, J., dissenting).

It is no answer to say that all national sellers can predict that they will be sued in every court in the land, because there is no predictable relationship between the distribution of a company's products across the 50 states and the company's products liability cases. *See* Pet. App. at 79a (Werdegar, J., dissenting). Nor can companies predict which courts will become magnet jurisdictions and how disproportionate their impact on products liability law may become.

For example, pharmaceutical companies also face thousands of personal injury claims in St. Louis, another magnet jurisdiction with state courts that expansively construe personal jurisdiction. None of the defendants in those cases is "at home" in Missouri, and the vast majority of the claims against

them have been brought by out-of-state residents. *See, e.g., Lovett v. Pfizer Inc.*, No. 1422-CC00225-01 (St. Louis Cir. Ct. Mar. 27, 2014) (three in-state plaintiffs and 88 out-of-state); *Anthony v. Bayer Corp.*, No. 1622-CC09415 (St. Louis Cir. Ct. June 10, 2016) (nine in-state plaintiffs and 86 out-of-state); *Hogans v. Johnson & Johnson*, No. 1422-CC09012-01 (St. Louis Cir. Ct. Sept. 29, 2014) (two in-state plaintiffs and 63 out-of-state).[8]

An appeal pending in the Eighth Circuit presents a similar issue. *See* Brief of Appellant at 5, *Robinson v. Pfizer, Inc.*, No. 16-2524, (8th Cir. Sept. 8, 2016) (asking "[m]ay a court, consistent with due process, exercise personal jurisdiction over claims by non-resident plaintiffs against a non-resident defendant based solely on their joinder in a single complaint with claims of resident plaintiffs over which the court has specific jurisdiction?"); *see also* Defs.' Mot. to Stay Proceedings at 1, *Tenny v. Bayer Corp.*, No. 4:16-cv-1189 (E.D. Mo. Sept. 30, 2016) (Dkt. 36) (seeking a stay in a similar case pending a ruling in *Robinson*). Thus, the question presented is one of importance not just for resolving litigation pending in California, but for litigation pending in other jurisdictions as well, involving claims of thousands of individuals.

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[8] Plaintiffs reportedly flock to St. Louis because of its reputation for denying motions to dismiss, providing little gatekeeping on expert testimony or other evidentiary restrictions, affording a jury pool friendly to plaintiffs, and upholding outsized verdicts; of the top six product defect verdicts in the United States in 2016, half came out of the St. Louis court. *See* Margaret Cronin Fisk, *Welcome to St. Louis, the Hot Spot for Litigation Tourists*, BloombergBusinessweek (Sept. 29, 2016), http://www.bloomberg.com/news/articles/2016-09-29/plaitiffs-lawyers-st-louis.

II. THIS CASE IS AN IDEAL VEHICLE FOR ADDRESSING THE QUESTION PRESENTED.

This case is an ideal vehicle for addressing the "relatedness" standard for personal jurisdiction because its relevant facts commonly arise and the outcome turns on a single question of law. As shown above, many pharmaceutical companies not "at home" in California are regularly sued in California and other state courts in complaints brought primarily by out-of-state plaintiffs.

Since *Daimler*, several courts have addressed whether a court's specific jurisdiction extends to the claims of out-of-state plaintiffs against pharmaceutical companies.[9] And the same question

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[9] *See e.g., Bartholome v. Pfizer, Inc.*, 2016 WL 366795, at *1 (E.D. Mo. Jan 29, 2016) ("Defendant's only contacts with Missouri are that they marketed and sold Zoloft in Missouri. These contacts do not relate to the causes of action in this suit, which arise out of Mother Plaintiff's ingestion of Zoloft in Florida and Minor Plaintiff's subsequent birth."); *Barron v. Pfizer, Inc.*, 2015 WL 5829867, at *1 (E.D. Mo. Oct. 6, 2015) (Pfizer's "only contacts with Missouri are that they marketed and sold Zoloft in Missouri. These contacts do not relate to the causes of action in this suit, which arise out Ms. Barron's ingestion of Zoloft in Florida and Alexander Barron's subsequent birth" with birth defects plaintiffs alleged were caused by Zoloft); *Torres v. Johnson & Johnson*, 2015 WL 4888749, at *5 n.5 (S.D. W. Va. Aug. 17, 2015) ("The finding of specific jurisdiction over the claims of the four New Mexico plaintiffs . . . does not support a finding of personal jurisdiction over the claims of the out-of-state defendants, whose claims have no nexus to the forum."); *Tulsa Cancer Inst., PLLC v. Genentech, Inc.*, 2016 WL 141859, at *4 (N.D. Okla. Jan. 12, 2016) (noting that personal jurisdiction must be established as to each plaintiff's claim); *In re Zofran Prods. Liab. Litig.*, 2016 WL 2349105, at *5 (D. Mass. May 4, 2016) (unpublished) (holding that a Missouri court would not have specific personal

arises in other product liability cases involving non-pharmaceutical products. Because Petitioner's case is typical of other cases in which jurisdiction is effectively premised on a company's nationwide sales and marketing rather than on any conduct in the forum causally related to the individual's suit, it is an ideal vehicle for addressing the relatedness test, and a natural next case to follow *Goodyear* and *Daimler*. It would enable the Court to resolve whether the principles underlying *Daimler, Goodyear*, and *World-Wide Volkswagen* apply more generally to product defect cases involving out-of-state plaintiffs injured out-of-state by a product manufactured, purchased and used out of the state.

The pending petition for certiorari in *TV Azteca* provides some further confirmation that the lower courts need guidance from this Court about how to apply the "relatedness" test. Pet. for a Writ of Cert. at i, *TV Azteca v. Ruiz*, No. 16-481 (Oct. 7, 2016), *available at* 2016 WL 5940880 ("TV Azteca Pet."). As between the two petitions, however, the *Bristol-Myers* petition provides a better vehicle for resolving the "relatedness" issue. Unlike in *TV Azteca*, the decision below turned entirely on the standard for "relatedness." *See* Pet. at 33; Pet. App. at 51a (Werdegar, J. dissenting) ("The key issue here is therefore whether the claims of the real parties in interest (plaintiffs residing in states other than California) arise out of or are otherwise related to, BMS's activities in California.").

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jurisdiction over claims brought by out-of-state plaintiffs); *Clarke v. Pfizer Inc.*, 2015 WL 5243876, at *2 (E.D. Mo. Sept. 8, 2015) (unpublished) (Flessing, J.) (holding that Pfizer's marketing and selling of Zoloft in Missouri did not relate to plaintiff's claim of injury in Nebraska); *accord In re Plavix Related Cases*, 2014 WL 3928240, at *1, 8-9 (Ill. Cir. Ct. Aug. 11, 2014) (unpublished).

In contrast, *TV Azteca* involves additional facts and legal issues that may not allow the court adequately to clarify the question presented in *Bristol-Myers*. In *TV-Azteca*, the Respondent alleged that petitioners in Mexico defamed her in a series of television reports broadcast in Mexico but viewable in Texas as well. The Respondent filed suit in Texas, where she was living temporarily. TV Azteca Pet. at 1-3.

Because the plaintiff in *TV Azteca* resided in Texas and the broadcast at issue allegedly caused harm to the plaintiff in Texas (*see* TV Azteca Pet. App. at 1a, 40a), a decision in that case may not adequately resolve the question, cleanly presented by the decision below, of a state court's exercise of jurisdiction over an out-of-state injury to an out-of-state plaintiff. *TV Azteca* also involves an alleged failure to "heed this Court's admonition" about respect for international comity, TV Azteca Pet. at 3, which is an additional factor counseling restraint that is not applicable to the decision below. Most importantly, the TV Azteca petition argues that the Texas Supreme Court improperly found specific jurisdiction without applying the "focal point" test from *Calder v. Jones*, 465 U.S. 783 (1984), and suggests that resolution of the focal point test could be outcome determinative. *See* TV Azteca Pet. at 3 ("Texas's rejection of *Calder*'s 'focal point' requirement was outcome determinative."). Indeed, the Texas Supreme Court devoted most of its analysis to the "focal point" issue.[10] The decision below, by contrast, fully aired the "relatedness" issue in extended opinions devoted to that issue by both the majority and the dissent.

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[10] *Compare* TV Azteca Pet. App. at 7a-37a (addressing the "focal point" issue), *with id.* at 38a-42a (addressing relatedness).

Finally, products liability cases are better-suited for announcing generally applicable jurisdictional rules than defamation cases because the latter can involve peculiarities such as the "single publication rule," which allows only a single action per publication. *See* Pet. App. at 69a-71a (Werdegar, J., dissenting) (explaining aspects of *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984) that limit its applicability to BMS's case). Resolving the overarching specific jurisdiction rule in the *Bristol-Myers* matter will therefore provide the clearest guidance to the lower courts facing innumerable comparable matters.

Because the decision below is an ideal vehicle to answer the important and recurring question presented and to resolve a persistent split among the lower courts, the petition should be granted.

CONCLUSION

For the foregoing reasons, the Court should grant the petition.

Respectfully submitted,

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